WISCONSIN STATE SENATOR
DAVE HANSEN
SENATOR – 30TH DISTRICT
ASSISTANT MAJORITY LEADER

Arbitration and fair-share agreements during collective bargaining negotiations
Senate Bill 46
Committee Testimony
Senate Committee on Committee on Labor, Elections and Urban Affair
3-12-09

Thank you Chairman Coggs and members of the committee. Senate Bill 46 was introduced on behalf of Teamsters Local 662 to remedy a situation that occurred several years ago in Brown County. After over two years of bargaining with Brown County, the union and the county went to interest arbitration. After arbitration, the county took the union's dues check off away. They had taken the arbitration rights away in the summer of 2004 after contracts had expired in December, 2003. During this time, the union was reduced to filing prohibitive practice charges for minor infractions but was left with no ability to protect their members from discharge during this time. They were, in effect, "employees at will" even though they were represented. While the dues check off was taken away, members were required to pay their dues directly to the local union without payroll deduction.

While the union is now trying to convince Brown County to recoup the delinquent dues from the employees, the county is not complying. This is all unreasonable because both taking away the dues check off and denying the grievance arbitration procedures is aimed at union busting. Neither helps the employer in any way other than putting a hardship on the union. This gives the employer an advantage over the union in bargaining. The dispute resolution process was put in place to avoid strikes. This loophole only fuels tension between employees and their employers.

Senate Bill 46 closes this loophole by making it a prohibited practice under MERA for an employer or an employee to end any grievance arbitration agreement during a contract hiatus and for an employer to end any fair-share agreement during a contract hiatus. Thank you Mister Chairman and members.

Committees
Joint Committee on Finance, Senate Vice Chair
Education
Transportation, Tourism, Forestry and Natural Resources
Special Committee on State-Tribal Relations
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My name is Michael E Williquette
I am a business representative Teamsters Local 662
I reside at 3824 Flintville road
Green Bay

I want to thank you for allowing us the opportunity to express our opinion on the bill before you sb46. I also want to thank Senator Hanson and all of the supporters of this bill for helping us as they have always been very good friends of the working men and women of this state.

I requested Senator Hanson to help us with this bill in the last session and again in this session because it is very important that labor and management are on the same level of the playing field when engaged in contract negations.

The reason this bill is before you is because employers currently have the option of refusing to honor grievance arbitration and dues check off during a contract hiatus. Employers argue this is their only weapon they have when the unions stall negotiations, when in fact the exact opposite happened to me. In my situation the employer stalled and refused to come to the table and when the union filed for interest arbitration the employer penalized the union by taking grievance arbitration and dues check off away. I have been negotiating labor agreements under the Municipal Employment Relations Act (MERA) for 21 years and only one employer has ever done this to me, but it happens to other agents in our Teamster locals and other unions all around the state on many occasions. If in fact the Employers argument is true that it is hardly ever used why do they need it?

Employers ~~they~~ feel they need weapons to fight the unions but participated in coming to the contract dispute resolution process which is in place in Wisconsin. If the employer meets the greatest weight argument under MERA they don't need any so called weapons to fend off the

Unions. The dispute resolution process was put in place to settle contracts between labor and management without strikes.

Employers argue they would be required to honor permissive subjects of bargaining during a contract hiatus. I don't believe they understand the interpretation of permissive, prohibitive and mandatory subjects of bargaining. If the subject is in fact permissive that means that both parties agreed to bargain the issue, so why wouldn't they want to honor what they agreed to? I want to remind this committee that if the employer is allowed to continue to choose not to honor grievance arbitration during a contract hiatus it turns our members into **at will employees**. This opens a window to allow employers to discipline employees without just cause up to and including termination for merely supporting their local union and enjoy bargaining collectively.

I honestly believe that most employers respect the collective bargaining process and I appreciate that but the few that will abuse it are a few too many. I urge you support sb46 and remind you that ABRAHAM LINCOLN Said "**All that harms Labor is treason to America**."Please don't turn your back on labor. Thank you. I would be happy to answer any questions you may have.

Respectfully submitted 4/12/2009
Michael Williquette
Teamsters Local 662 Business Representative
Chairman J.C. 39 Public Sector Division

WISCONSIN ASSOCIATION OF SCHOOL BOARDS

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John H. Ashley, Executive Director

TO: Members, Senate Committee on Labor, Elections and Urban Affairs
FROM: Dan Rossmiller, Government Relations Director
DATE: March 12, 2009
RE: **Senate Bill 46**, relating to arbitration and fair–share agreements during collective bargaining negotiations under the Municipal Employment Relations Act.

The Wisconsin Association of School Boards (WASB) **opposes** Senate Bill 46.

The current bargaining law—Wisconsin's Municipal Employment Relations Act (MERA)—allows school boards and other local governments to refuse to honor fair-share and grievance arbitration provisions during a contract hiatus, a period during which negotiations over a new contract are underway (i.e., the period after an existing contract expires and before a new contract is ratified).

Senate Bill 46 would make it a prohibited practice under for an employer or an employee to end any grievance arbitration agreement during a contract hiatus and for an employer to end any fair–share agreement during a contract hiatus.

The WASB is not aware of any problem with school district employers refusing to honor fair-share provisions. When they do it is generally in response to a union failure to perform to the contract.

Occasionally, however, a school district employer will refuse to honor a grievance arbitration provisions during a contract hiatus. Usually, this happens when the alleged contract violation is based on permissive contract language—language the district was not obligated to bargain over in the first place.

In such instances, current law correctly recognizes that once a collective bargaining agreement expires, the parties to that agreement should not be obligated to continue using grievance arbitration procedures to settle disputes over the meaning of the expired agreement. Attention should be focused instead on reaching a new agreement and on resolving any disputed issues at the bargaining table.

If an employer violates contract language that is a mandatory subject of bargaining (i.e., a subject on which the employer has a statutory duty to bargain) during a contract hiatus, under current law the union can contest this violation by filing a prohibited practice complaint under s.111.70 (3)(a)4, Stats. (based on a refusal to bargain).

Such a prohibited practice complaint (based on a refusal to bargain) is not available, however, under current law if the alleged contract violation concerns permissive contract language (i.e., language concerning a subject on which the employer has no statutory duty to bargain). This is because an employer cannot be found guilty of refusing to bargain over a matter it has no duty to bargain in the first place.

Some may try to argue that Senate Bill 46 opens up a fair avenue for resolving disputes over the meaning of an expired contract. We disagree.

Labor relations between employers and unions are generally self-governing. Generally, the Legislature has respected this. Historically, the "prohibited practices" it has defined under section 111.70(3)(a), Stats., have related to employer actions that impair the free exercise of essential employee rights, such as the right to form, join, or assist labor organizations. When the Legislature expands the scope of "prohibited practices" beyond the traditional boundaries, and defines new employee rights, as it does in Senate Bill 46, it risks playing "Big Brother" and overstepping its role.

The WASB urges members to **oppose** Senate Bill 46.

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MEMORANDUM

TO: Honorable Members of the Senate Committee on Labor, Elections and Urban Affairs

FROM: David Callender, Legislative Associate

DATE: March 12, 2009

SUBJECT: Opposition for Senate Bill 46

The Wisconsin Counties Association (WCA) opposes Senate Bill 46 (SB 46) which requires counties to maintain the grievance process during contract negotiations and continue to abide by fair-share agreements if a county believes the union is engaged in delaying tactics.

The bill appears to be targeted at one specific situation, but the impact of this legislation would undermine the ability of counties to respond to perceived delays in the collective bargaining process, and could therefore undermine the process of concluding contract negotiations in a timely fashion.

WCA respectfully requests your opposition for Senate Bill 46.

Thank you for considering our comments. Please contact me if you have any questions.

COUNTY OF DOOR
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February 16, 2009

Wisconsin Senate
Committee on Labor, Elections and Urban Affairs
Attn: Senator Spencer Coggs, Chairperson
Room 123 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Re: Senate Bill 46
Arbitration and Fair-Share Agreements During Collective Bargaining Negotiations
Public Hearing Testimony

Honorable Members:

Thank you, Chairperson Coggs and committee members, for the opportunity to submit written testimony on Senate Bill 46. Door County strongly opposes Senate Bill 46.

Please note that I have extensive experience in employment relations, from the both the labor side and management side. Over the years, I've gained a clear understanding of employment relations from both management's and labor's perspective. I got my first union card in 1965 when I became a member of the Retail Clerks International Union and finished my union activity in 1995 when I took a withdrawal card from UAW Local 960 in Kenosha. I spent eighteen years at the Macwhyte Wire Rope Company and was honored to serve as the president of the union. I've since been fortunate to have spent the last eleven years as part of county government negotiating teams in Kenosha and Door counties where mutual respect in collective bargaining is paramount to me both personally and professionally.

I submit that the underlying premise of this legislation, that the collective bargaining "playing field" is tilted against unions, is faulty. In fact I would posit that the opposite is true, particularly in the public sector.

What is fair or reasonable is in the eye of the beholder. Public sector employers have precious few tools to use during the collective bargaining process. This is not to be construed as a complaint, but rather a statement of fact. Halting fair share agreements or refusing to process grievances to arbitration during a contract hiatus may be the last two left in our tool box. The use of these tools by an employer, to put a bit of pressure on the union during negotiations, is part and parcel of the process of collective bargaining.

The reality is that employers do not, as a matter of course, fail to honor fair share agreements *or* refuse to process a grievance to arbitration during a contract hiatus. On occasion an employer may do so … but generally only with good reason. For instance:

- an employer may refuse to process a grievance during a contract hiatus if the alleged violation is based on a permissive subject of bargaining;
- an employer may halt fair share agreements if the union is engaged in delaying tactics.

Any suggestion that the foregoing are wide-spread practices is not supported by empirical evidence.

Let's take a clear-eyed view of these issues. To wit:

Fair-Share Agreement During a Contract Hiatus

There has been some suggestion that this legislation is necessary to close a loophole. Nothing could be further from the truth. There is no loophole.

The Wisconsin Legislature first sanctioned fair-share agreements in 1971. Chapter 124 Laws of 1971 permitted inclusion of fair-share clauses in municipal employee collective bargaining agreements.

Employers were and are precluded from deducting fair share fees in the absence of an agreement providing for such deduction. This concept is enshrined in MERA... specifically *Section 111.70(3)(a)6, Wisconsin Statutes*.

The Wisconsin Employment Relations Commission [WERC] and Wisconsin Courts [Courts] have long held that it is appropriate to halt fair-share agreements during a contract hiatus. As authority for this proposition, I refer the reader to "*Gateway VTAE*" *WERC Dec. No. 14142-A (1/77)*, "*County of Sauk*" *WERC Dec. No. 17657-D (2/82)*, "*Berns v. WERC*" *[Wis.App., 1979] 94 Wis.2d 214, 287 N.W.2d 829*, and "*AFSCME, Local Union No. 360 and 3148, AFL-CIO v. WERC*", *[Wis.App.,1988] 148 Wis.2d 392, 434 N.W.2d 850*. This precedent has existed for more than 30 years.

Why would the WERC and Courts sanction halting fair share agreements during a contract hiatus if it were unreasonable or unfair? The simple truth is that such is neither unreasonable nor unfair. I urge you to acknowledge and accept the informed and fair judgment of the WERC and the Courts, and not wipe out long established and respected precedent by legislative fiat.

Fair-share agreements benefit the union itself rather than the individual employees. Such agreements do not bear any direct relation to the employer-employee relationship, have no impact on wages, hours or conditions of employment, and are therefore easily distinguishable from other mandatory bargaining subjects of bargaining. The notion, that halting fair-share agreements during a contract hiatus harms union members, is ludicrous.

Unions may collect dues directly from its members [and conversely members may submit dues directly to a union] during a contract hiatus period. Employers and Unions frequently [if not universally] enter into fair share agreements which apply retroactively to any hiatus period. Unions are not significantly or permanently injured by fair-share agreements being halted during a contract hiatus. It is a mere inconvenience.

Arbitration During a Contract Hiatus

In "*Dodgeland School District*" *Dec. No. 31098-C (2/07)*, the WERC confirmed that:

- arbitration is not part of the *status quo* in effect during a contract hiatus period; and
- the steps in the grievance procedure that precede arbitration remain part of the *status quo* during a contract hiatus period.

In doing so the WERC reaffirmed a principal that dates back to 1977. The reader is referred to "*School Dist. No. 6, City of Greenfield*" *Dec. No. 14026-B (WERC, 11/77)* and "*Racine Unified School District*" *Dec. No. 29203-B (WERC, 10/98)*, which support these assertions.

During a hiatus between contracts, both parties are obliged to exhaust the grievance procedure in the expired contract that precedes arbitration. The WERC will then assert jurisdiction over a unilateral change claim based upon alleged departures from terms and conditions set forth in the expired contract. Any assertion that the union or an employee is without adequate remedy during a contract hiatus is baseless.

Collective Bargaining Process - Period Between Expiration of the Existing Contract and Execution of its Successor.

There's an old adage that states "bad facts make bad law". That, I respectfully assert, is the situation here.

The case that prompted SB-46 [per Senator Hansen's and Representative Soletski's January21, 2009, memorandum] arose in Brown County. In brief...Brown County and Teamsters Local 75 were [apparently] engaged in negotiations for twenty eight [28] months. This is not a normal occurrence, but rather an aberration.

Fair questions to ask include: 1) Why did the collective bargaining process break down? 2) What caused the inordinate delay? It certainly was not due to Brown County halting fair share agreements or refusing to process grievances to arbitration. Something else went terribly askew.

There is, generally speaking, no reason for a lengthy hiatus-period. The parties typically begin negotiating over the terms of a successor agreement prior to expiration of the existing contract. If, after a reasonable period of negotiation and after mediation, the parties remain deadlocked... interest arbitration may be initiated by petition of either or both parties to the WERC. The WERC makes an investigation to determine whether an impasse exists. Prior to the close of the WERC's investigation each party must submit a written final offer containing its final proposals on all issues in dispute to the commission. The matter then proceeds to an interest arbitration hearing.

In the case that prompted SB-46, the aggrieved party's timely initiation of interest arbitration would have avoided the 2+ year hiatus period ... and any attendant negative consequences.

Today's Fiscal Crisis and Local Units of Government

A final point...local governments in Wisconsin are weathering their worst financial crisis since the Great Depression. Now is not the time to remove the only forms of leverage public sector employers may utilize during the collective bargaining process.

For the foregoing reasons, I urge you to oppose SB-46.

Thank you for considering my comments.

Please do not hesitate to contact me if you have any questions.

Respectfully;

Michael J. Serpe
County Administrator

c: Representative Garey Bies
Leo W. Zipperer, Door County Board Chairperson
Senator Hansen
Senator Lehman
Senator Wirch
Senator Vinehout
Senator Erpenbach
Representative Soletski
Representative Berceau
David Callender, WCA